

REMARKS/ARGUMENTS

The Office Action mailed December 19, 2005 has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Status of the Claims

Claims 1-4, 9-24, 26, 30-32, 52, and 63-85, 87-91 are now pending. No claims stand allowed.

All of the pending claims remain unchanged, but the listing of the claims is presented for the Examiner's convenience.

The 35 U.S.C. §103 Rejection

Claims 1-4, 9-24, 26, 30-32, 52, 63-85 and 87-91 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Brendel et al. (U.S. Pat. No. 5,774,660) in view of Lamarque et al. (U.S. Pat. No. 6,690,651), among which claims 1, 9, 13, 17, 20, 30, 63, 66, 68-69, 71, 74, 76, 78, 81 and 83 are independent claims. This rejection is respectfully traversed.

According to M.P.E.P. §2143,

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable

expectation of success must both be found in the prior art, not in the applicant's disclosure.

Furthermore, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Claim 1 defines a backup server for enabling a data communications network to recover from a local server failure, the data communications network including a network access server (NAS) for coupling a call placed from a call-in user to the data communications network, the NAS having a memory associated therewith. The claimed backup server comprises (a) an information packet receiver responsive to the local server failure, the information packet receiver receiving from the memory associated with the NAS an information packet associated with an ongoing call placed by the call-in user via the NAS, the information packet containing call information of the ongoing call for maintaining connection of the ongoing call if the local server fails, and (b) a parser for reconstructing the call information from the information packet such that the backup server maintains the ongoing call to the data communications network, as recited in claim 1.

In the Final Office Action, the Examiner maintains the previous rejections, contending that the elements of the presently claimed invention are disclosed in Brendel except that Brendel does not teach a user's placing a request by calling in. The Examiner specifically equates Brendel's backup load balancer 70' illustrated in FIG. 19 (also in

column 9, lines 9-10) thereof with the claimed network access server (NAS). That is, according to the Examiner's allegation, Brendel's load balancer 70 (in FIGS 8 and 19 thereof), individual servers 56, 51, and 52 (FIGS. 8 and 19 thereof), backup load balancer 70' (in FIG. 19 thereof), and client browser 10 (FIGS. 8 and 19 thereof) correspond to the claimed backup server, the claimed local server, the claimed NAS, and the claimed user (but not "calling-in"), respectively.

The Examiner further contends that Lamarque teaches a user placing a request by calling in, and that it would have been obvious to utilize Lamarque's teachings in Brendel's system "to request data information through a network because it would have enabled user to bypass long distance carriers and their permanent usage and to run voice traffic over the Internet" (Final Office Action, page 4), citing column 1, lines 25-29 of Lamarque. The Examiner specifically equates a terminal such as IP terminal 122 of Lamarque as a call-in user. The Applicants respectfully disagree for the reasons set forth below.

First, it should be noted that Lamarque describes advantage of Internet telephony, or voice over IP (VoIP), not a data request or transmission over the Internet as described in Brendel. In the conventional telephone (voice) calls, a long distance call must be directly connected from a caller via long distance carrier(s) to a receiver. However, if VoIP is used, a caller (user) may make a local call, if the user is a remote or dial-up user, to a local Internet access point, or directly use the Internet access from a LAN, to send the voice message over the Internet, such that a long distance carrier (traditional public

switch network: PSTN 102) is bypassed, as shown in FIG. 1 of Lamarque. Thus, Lamarque's teaching is sending voice messages over the Internet, without making a long distance call to the receiver. Further details are discussed below.

In Brendel, when the client browser 10 decides to send a request using a dial-up connection, for example, the client 10 would place a local call to a nearby network access point to connect to an Internet-service provider (ISP). Then, the user's request is communicated to the destination (the web site 144) over the Internet 66 through internet connections 142, 148, using data packets. The Internet connection (traffic) using data packets is typically free, except predefined Internet access fees. Thus, in Brendel, the client 10 would only be charged for a local call to send a request over the Internet (this is the same for Lamarque's VoIP).

On the other hand, if Brendel should be modified as the Examiner alleges, the client 10 must become a call-in user placing a call via the backup load balancer 70' (the alleged NAS) to the communication network. Thus, the modified client 10 need to place a call to the backup load balancer 70', i.e., make a long distance call to the web site 144, which may be located anywhere in the world. Thus, the alleged modification would cost the client 10 charges for a long distance call to the backup load balancer 70' in order to send a request to the web site 144. Since Lamarque's teaching is not making a long distance call, but running voice traffic using Internet for a flat monthly Internet access fee (column 1, lines 28-29 thereof), Lamarque teaches away from modifying the client 10 into a call-in user making a call to the backup load balancer 70'.

Furthermore, contrary to the Examiner's allegation, Brendel's backup load balancer 70' does not disclose or teach the claimed NAS for the reasons set forth below.

The claimed NAS couples a call placed from a call-in user to the data communications network, as recited in claim 1. On the other hand, Brendel described the backup load balancer 70' as follows:

FIG. 19 is a diagram of a fault-tolerant web site with a back-up load balancer and dual Internet connections. Browser 10 sends requests through Internet 66 with a virtual IP address for the whole web site. Incoming packets with the virtual IP address are routed to load balancer 70 over local LAN 144. Local LAN 144 may contain routers, switches, and hubs when servers are located on separate network nodes. Local LAN 144 connects to Internet 66 through Internet connection 142 which directly connects to Internet connection router 140, and through Internet connection 148, which is connected to Internet connection router 146. (Column 18, lines 44-54)

A backup load balancer 70' is also provided to take over operation should primary load balancer 70 fail. These load balancers are located on separate servers to lessen the chance that both fail at the same time. Backup load balancer 70' closely monitors primary load balancer 70 to detect a failure. (Column 19, lines 9-14)

Thus, any server on the LAN 144, including the backup load balancer 70' (or the hosting server 55) in Brendel's system (web site) receives user requests through the Internet 66 (the alleged communication network) via a connection router 140 or 146. That is, the servers in the web site are a destination to which the user (client browser 10) sends a request from the other side of the Internet 66, as shown in FIG. 19 of Brendel. Accordingly, the backup load balancer 70' (the alleged NAS) receives a user's request from the communications network via a router, and thus the backup load balancer 70'

cannot couple a request (the alleged call) from a user to the communications network, as recited in claim 1. In addition, the only functions of the backup load balancer 70' described in Brendel are to monitor the primary load balancer 70 and take over the operation should primary load balancer 70 fail.

Furthermore, as discussed below, there are additional reasons why Lamarque does not teach or suggest modifying Brendel's system such that a user places a request by calling in to the backup load balancer 70', the alleged NAS, as the Examiner alleges.

Brendel's servers within in the LAN 144 are accessed using IP addresses and structured to communicate using data packets (column 6, lines 8-52 thereof) through connection routers. Thus, these servers, including the server 55 hosting the backup load balancer 70', are not capable of receiving a call placed from a call-in user (i.e., a direct dial-up call from a user), unless the structure and function thereof are substantially changed. In order for the server 55 (or the backup load balancer 70' thereon) to receive a user's dial-up call placed on to a telephone line, the server 55 must be modified to have a direct connection to a telephone line, bypassing the connection routers 140, 146 and the Internet 66, to be accessed via telephone numbers, not IP addresses. Such a modification would require substantial changes in the principle of operation (from using data packets to using telephone signals) of the server 55 and the entire network structure of the web site (LAN 144) of the Brendel's system. The server 55 would need modems coupling to telephone lines. However, "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then

the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). In *Ratti* case, the court reversed the rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." *Id.*, at 352.

Accordingly, even if Lamarque may allegedly teach a user placing a request by calling in, it would not have been obvious to modify Brendel's system such that a call-in user places a call via the backup load balancer 70' (the alleged NAS) to a data communications network.

With respect to the remaining allegations of the Examiner, which are identical to those in the previous Office Action, the Applicants incorporate by reference the arguments presented in the previous response.

Consequently, Brendel, whether considered alone or combined with teaching of Lamarque, does not teach or suggest the claimed backup server as recited in claim 1.

Other independent claims 9, 13, 17, 20, 30, 63, 66, 68-69, 71, 74, 76, 78, 81 and 83 includes, among others, substantially the same distinctive features regarding the NAS and the information packet, as discussed above. Accordingly, it is respectfully requested that the rejection of claims based on Brendel and Lamarque be withdrawn.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Dependent Claims

Claims 2-4 and 85 depend from claim 1, claims 10-12 and 87 depend from claim 9, claims 14-16 and 88 depend from claim 13, claims 18-19, 52 and 89 depend from claim 17, claims 21-24, 26 and 90 depend from claim 20, claims 31-32 and 91 depend from claim 30, claims 64-65 depend from claim 63, claim 67 depends from claim 66, claim 70 depends from claim 69, claims 72-73 depend from claim 71, claim 75 depends from claim 74, claim 77 depends from claim 76, claims 79-80 depend from claim 78, claim 82 depends from claim 81, and claim 84 depends from claim 84, and thus include the limitations of respective independent claims. The argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable at least for the same reasons.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Conclusion

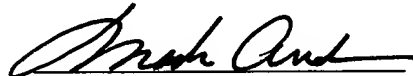
It is believed that this Response places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-1698.

Respectfully submitted,
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